IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Cosmopolitan Education Society Vs. CIT, Jaipur

(D.B Income Tax Appeal No.203/2005)

Date of Judgment :: September 11th, 2006

PRESENT
HON'BLE MRS. JUSTICE G.S. MISRA
HON'BLE Dr. JUSTICE VINEET KOTHARI

Mr. Sanjay Jhanwar for the appellant.
Mr. Anuroop Singhi for the respondent.

REPORTABLE BY THE COURT: (Per Hon'ble Dr. Kothari, J.)

1. This appeal U/s.260A of the Income Tax Act, 1961 (hereinafter referred to as `the Act') has been filed by the assessee against the appellate order of the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur allowing the Revenue's appeal and remanding the case back to the first Appellate Authority i.e. Commissioner of Income Tax (Appeals) to decide the issue again as to whether there was any mis-utilisation of the funds by the trustees or owners of the assessee Society and consequently whether the assessee was entitled to exemption from income tax U/s.10(22) of the Act.

2. This appeal is for the assessment year 1996-97 and learned counsel urged that for the preceding assessment year 1995-96 the Income Tax Appellate Tribunal itself has decided in favour of the assessee that the assessee was entitled to exemption U/s.10(22) of the Act and even the appeal against the said order of the Income Tax Appellate Tribunal was dismissed by this Court and the said

judgment has been reported as Deputy Commissioner of Income Tax Vs. Cosmopolitan Education Society [(2000) 244 ITR 494 Raj.] and SLP against that judgment of Division Bench has also been dismissed by the Hon'ble Supreme Court as reported in [(2000) 241 ITR 132 (St.)].

3. The same contention was urged before the learned Income Tax Appellate Tribunal also that on the basis of exemption given for the preceding year U/s.10(22) of the Act the same should be given for the present assessment year 1996-97 in question, however, the Tribunal found that the first Appellate Authority without giving any details and finding about the mis-utilisation of the funds by a short and cryptic order found that the facts of the case in the present assessment year 1996-97 are identical to assessment year 1995-96 and, therefore, the appeal of the assessee was allowed. The Tribunal in second appeal, however, found that in the absence of any finding about the mis-utilisation of the funds for the present assessment year 1996-97 by the learned Commissioner (Appeals), that the first Appellate Authority should give his findings about the same and, therefore, the matter was remanded back to the learned Commissioner (Appeals).

4. Being aggrieved by the said order of remand of the learned ITAT, the assessee has preferred this appeal for the assessment year 1996-97 claiming that certain substantial questions of law arise in the matter.

5. Section 10(22) of the Act which has since been deleted or omitted from the statute book w.e.f. 1st April, 1999 provided for exemption from Income Tax. Section 10 (22) part relevant point of time read as under:-

> "10(22) any income of a University or other educational institution, existing solely for educational purposes **and not for purposes of profit."**

6. With effect from 1.4.1999, i.e. A.Y. 1999-2000, this exemption available to educational institution, stands withdrawn and the rationale behind such withdrawal lies in the wide misuse of such exemption in the absence of any monitoring mechanism for checking genuineness of the activities of the educational institutions claiming such exemption.

7. The question whether the educational institution existed solely for educational purposes and not for purposes of profit, is a question of fact and every year the Assessing Authority is entitled to examine the facts of the case as to whether during the assessment year in question the educational institution existed solely for educational purposes and not for the purposes of profit. It would naturally depend upon the fact as to whether the expenditure incurred by the educational institution is for educational purposes or otherwise or whether the profit earned by the educational institution has been utilised for the purpose of education only or not. Obviously, since the exemption from income tax was granted only if such university or educational institution existed solely for education purposes and not otherwise, this enquiry independently is necessary for every assessment year, before allowing such exemption.

8. The Assessing Authority for assessment year 1996-97 in question had discussed in details as to why he was disallowing the exemption U/s.10(22) of the Act. A cursory look of the said assessment order would show that a sum of Rs.6,15,115/- was even found to be diverted in the shape of construction material to be used in the

residential building of Shri B.D. Singh, the trustee of the said Society. Various other disallowances were made by the Assessing Authority and it was found that they are not expenditure incurred for the purposes of school or the educational institution. The said findings of the Assessing Authority were set aside by the short and cryptic order of the CIT (Appeals) directing the Assessing Authority to exempt the income of the assessee U/s.10(22) of the Act. That was not found to be justified by the learned ITAT and, therefore, the Tribunal has remanded the case back to the CIT (Appeals) for re-deciding the issue and give appropriate findings of facts. Without comparing the facts of A.Y. 1996-97 with the facts of the previous A.Y. 1995-96 the learned CIT (Appeals) could not have mechanically observed that the facts were identical to those obtaining in the previous assessment year. Since the mis-utilisation of funds is a question of fact which may be different in different assessment years this exercise of enquiry for giving findings of facts was necessary at the end of the CIT (Appeals) before bluntly setting aside the findings of the Assessing Authority. Having not done so, we find that the learned Tribunal was only justified in remanding the case back to the learned CIT (Appeals) for fresh enquiry.

9. We do not find any substantial question of law arising out of the order of the Tribunal remanding the case back to the CIT (Appeals) as the enquiry envisaged for compliance with the terms of Section 10(22) is still pending before the learned CIT (Appeals) upon remand by the learned ITAT. This cannot be disputed that enquiry for each assessment year is independent and necessary for the purposes of grant of exemption U/s.10(22) of the Act, therefore, the submission of the learned counsel for the assessee that for the preceding year such exemption was allowed by the Tribunal and was upheld by this Court is

of no assistance to the assessee as far as present assessment year 1996-97 is concerned. Allowing the assessee's appeal merely following the decision of Tribunal as upheld by this Court for the immediately preceding year without allowing the first Appellate Authority to undertake such enquiry to give the findings of facts would not, in our opinion, subserve the purpose of Section 10(22) of the Act. It is also well settled that each assessment year in the income tax assessment proceedings is independent and principles of res judicata do not apply to the income tax proceedings.

10. Therefore, we do not find any substantial question of law to be arising out of the order of the Income Tax Appellate Tribunal by which it has merely remanded back the case, setting aside the short and cryptic order of the learned CIT (Appeals), for re-determination of the facts and return appropriate findings of the facts.

11. Accordingly, this appeal, in our opinion, has no force and the same is hereby dismissed.

(Dr.VINEET KOTHARI),J. **(G.S. MISRA), J.**

VS/